UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

DOCKET NOS. 3:09cr234-02 & 3:12cv388

UNITED STATES OF AMERICA,)	
)	
Plaintiff(s),)	
)	
VS.)	ORDER
)	
CHARLES R BURNS,)	
Defendant(s).)	
)	
)	

DEFENDANT CHARLES R. BURNS, *pro se*, has filed three separate motions (Doc. Nos. 68, 71, and 74 in 3:09cr234 and Doc. No. 1 in 3:12cv388) seeking a reduction in his sentence based upon the recent Supreme Court decision <u>Dorsey v. United States</u>, 132 S.Ct. 2321 (2012), and the recent Fourth Circuit decision <u>United States v. Simmons</u>, 649 F.3d 237 (4th Cir. 2011) (en banc). Because the Court finds that <u>Dorsey does</u> apply to the Defendant's case but <u>Simmons does not</u>, the Court GRANTS IN PART and DENIES IN PART the Defendant's motions to reduce his sentence.

As to <u>Simmons</u>, the Court finds that the Defendant's two prior felony convictions occurred before the State of North Carolina adopted Structured Sentencing in 1994. <u>See</u> Doc. No. 7.¹ Thus, both of his prior felony convictions had a maximum term of imprisonment in

¹The Defendants prior convictions are: Felony Possession of Cocaine (Docket No. 1991CRS013966), in the Superior Court Division for Mecklenburg County, North Carolina, July 5, 1991, and, Felony Possession of Cocaine (Docket No. 1992CRS084487), in the Superior Court Division for Mecklenburg County, North Carolina, February 5, 1993.

excess of one year and qualify as felonies under Simmons. Therefore, Simmons provides the

Defendant no relief.

As to Dorsey, however, the Defendant does receive the benefit of the retroactive

application of the Fair Sentencing Act because, although his crime of conviction – conspiracy to

distribute cocaine base – occurred before the effective date of the Fair Sentencing Act on August

3, 2010, he was sentenced after that date on May 17, 2011. Accordingly, his sentence should be

and will be reduced pursuant to <u>Dorsey</u> as set forth in the Supplement to the Presentence Report

(Doc. No. 72).

THEREFORE, the sentence of Defendant CHARLES R. BURNS is hereby reduced from

168 months to 120 months.

The Clerk of Court will certify a copy of this Order to the United States Marshals'

Service and the United States Bureau of Prisons.

Signed: December 28, 2012

Frank D. Whitney

United States District Judge